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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,062	10/12/2001	Paula Mary Sosalla	KCC 4777	1782

321 7590 10/12/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,062

Applicant(s)

SOSALLA ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 20, 2006 has been entered.

Response to Amendment

The amendment filed January 20, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the applicant has amended the claim to recite a gradation defining progression through successive stages of intensity of coloration. The terminology related to successive stages is not supported by the originally filed specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 22 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a color gradation including any visible change in coloration intensity, does not reasonably provide enablement for a color gradation defining a gradual progression through successive stages of intensity of coloration. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson et al. (US 6,297,424)

The applied reference has a common applicant with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to claim 1, Olson et al. (hereinafter "Olson") discloses a disposable absorbent article having an area which is visible when the article is worn, a color gradation in the area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color (one of fish 78), said gradation defining a gradual progression through successive stages of intensity of coloration (col. 2, lines 3 – 53) and a visible element (70) in the area at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claims 2 – 4, Olson discloses the visible element as a graphic, registration mark, and/or wetness indicator as set forth in col. 3, lines 29 – 32 and col. 4, lines 40 – 58.

With reference to claim 5, Olson discloses an article having an outer cover (110) and an absorbent material disposed inside the cover (44) said color gradation and wetness indicator disposed on the cover as set forth in col. 9, lines 49 – 52.

As to claim 6, Olson discloses the wetness indicator comprising and active graphic (one of fish 78) as set forth in figure 1.

With reference to claim 7, Olson discloses an absorbent article as a pant having a front region, back region, crotch region and wetness indicator on a portion of the crotch region which is substantially free of color as set forth in figure 4.

As to claims 8 and 9, Olson discloses a coloration change from higher intensity to lower intensity generally in the direction of the crotch region on one or more sides of the pant as set forth in col. 2, lines 4 – 15; col. 2, line 50 to col. 3, line 6; col. 13, lines 27 – 45 and figure 1.

Regarding claims 10 – 11, Olson discloses a color gradation involving only one color or a combination of different colors as set forth in col. 2, line 50 to col. 3, line 6 and col. 7, lines 39 – 43.

With respect to claim 12, Olson discloses an article further comprising a graphic and a registration mark on the article as set forth in col. 4, lines 46 – 49 and in figure 1. Olson discloses the use of licensed characters as suitable graphics, which are considered registration marks, along with other types of graphics.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference

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as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 13, Olson discloses an absorbent article as a pant having a crotch region wherein the registration mark is located on the crotch region (78) as set forth in figure 1.

With reference to claim 14, Olson discloses an article comprising a training pant having an outer cover with an interior surface and an opposite exterior surface, and an absorbent material disposed on the interior surface (figure 7a), said pant further having front, back and crotch regions, said visible element comprising an active graphic (one of fish 78) on the crotch region for indicated the wetness of the crotch region as set forth in figure 1.

Regarding claim 15, Olson discloses a disposable absorbent pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the cover (figure 7A), said pant further having front and back regions which define a waist region, a crotch region extending between the front and back regions (figure 3), a color gradation on an area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region (one of fish 78), said gradation defining a gradual progression through successive stages of intensity of coloration (col. 2, lines 3 – 53) and a wetness indicator in the crotch region at a location where the coloration is lower intensity or absent such that any indication of wetness by the

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wetness indicator remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claim 16, Olson discloses an absorbent pant wherein the wetness indicator comprises an active graphic (one of fish 78) as set forth in figure 1.

With reference to claims 17 and 19, Olson discloses a printed color gradation in the area as set forth in figure 1.

As to claims 18 and 21 – 22, Olson discloses a color gradation that appears in the area whether the area is wet or dry as set forth in col. 2, lines 11 – 15.

With respect to claim 20, see col. 2, lines 36 – 49.

Response to Arguments

Applicant's arguments filed January 20, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Olson fails to show or suggest a color gradation, the examiner disagrees. The instant application specifically states that the term color gradation refers to any (emphasis added) visible change in coloration intensity. The change in coloration does not inherently include an increase in intensity. Fading graphics, which include a decrease in coloration, may be included because these types of graphics also produce a visible change in coloration. Similarly, as noted on page 2, lines 10 – 15 of Olson, a fading graphic becomes invisible, thereby

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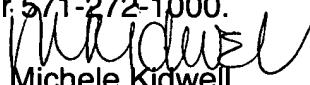
supporting the examiner's position that the graphic varies in intensity from an area of higher intensity (i.e., non faded graphic) to an area of lower intensity (i.e. faded graphic).

With respect to the applicant's argument regarding a permanent ink, Olson discloses the use of permanent ink in col. 2, lines 36 – 39.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michele Kidwell
Primary Examiner
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